IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1946

FRANCIS X. GOMILA,

Petitioner.

VS.

No. 1282

UNITED STATES OF AMERICA,

PETITION FOR RE-HEARING

I.

Petitioner, Francis X. Gomila, respectfully petitions the Court to reconsider its denial of the application for a writ of certiorari herein, on the following grounds, to-wit:

The regulations herein were issued pursuant to Title III of the 2nd War Powers Act as amended (50 U.S.C.A. App. Section 633, et sec.). The Circuit Court of Appeals

held that it had no jurisdiction to determine the validity of the regulations challenged by petitioner for the reason that jurisdiction to determine the validity thereof had been expressly conferred by the Statute upon the Emergency Court of Appeals. In a prior case, Blalack v. U. S. 6th Circuit, 154 F. 2nd 591, the Court held that the jurisdiction of the Emergency Court of Appeals was restricted to passing on regulations promulgated under the Price Control Act. The direct conflict in the holdings of the same court with respect to a jurisdictional question would seem to present a question of sufficient importance to justify the consideration thereof by this Court.

II.

Transgressions of fundamental rules of fairness, governing the conduct of criminal prosecutions, as conceived by us, were so persistent and pronounced during the trial of petitioner as to cause us to believe that some of these were inadvertently overlooked by this Court. Misleading statements in the brief of the Government, opposing the petition for certiorari, may have contributed to such a result.

One of these misleading statements appears at page No. 11 of the Government's brief. There referring to the reading of a letter by the Chief of the Sugar Rationing Division of the Memphis O.P.A. Office, containing the statement that the New Orleans' O.P.A. Office had "completed" its case against petitioner, and that the matter would be referred to the District Attorney there, the Government's attorneys say that the witness was given this file, "*which*

petitioner's attorneys had examined overnight," and asked when he had received the file after writing for it *"on May 5, 1945"*. Taking advantage of this question, the witness, an O.P.A. Official, read the offending letter, dated December 17, 1945, which had no bearing on the question asked. Moreover, when this file was turned over for examination to petitioner's attorneys, all information relevant to the question asked the witness had been removed from the file, a fact known to the witness, but not to petitioner's counsel, and it is clear of doubt that design to prejudice the jury against petitioner was the sole purpose of the witness in reading this letter. This incident is discussed somewhat in detail in the petition for a rehearing, filed in the Circuit Court of Appeals, and the attention of this court is especially directed to that discussion (R. 404-408).

Another misleading statement in the Government brief appears at Page No. 13 of that document. Attempting to justify the irrelevant and prejudicial cross-examination of petitioner with respect to the organization and conduct of the various enterprises that made up the X-L Sales Company, the Government brief (p. 13) asserts that petitioner was also *"questioned about the fact that, after having been allotted approximately* 460,000 *pounds on December* 15, 1944, *he had stated in another application that on December* 31, 1944, *he had no sugar on hand* (R. 310-313)".

The allotment of 460,000 pounds on December 15, 1944, was for the *first quarter of* 1945. The statement of the sugar inventory as of December 31, 1944, related to the balance on hand of *allotments made for* 1944, which was a separate and distinct matter from the allotment made December 15, 1944, for the first quarter of 1945. The question asked by the District Attorney, referred to in the

Government brief, may aptly be described as a trick question (R. 311-313) intended to create the impression that petitioner had made a false statement when he had not, and if it thus confused the attorneys who prepared the Government brief in this court, there is no reason to doubt its effect upon the jury.

The organization and conduct of the various enterprises that made up the X-L Sales Company had no bearing on the right of the St. Bernard Syrup Company to obtain sugar for its Memphis plant, and the questions asked were not relevant either in determining the nature of the action taken by O.P.A. officials at New Orleans or petitioner's credibility as a witness. Obviously, they were not asked for either of these purposes but to create an unfair prejudice against petitioner by showing the amount of sugar used by his enterprises. There was no evidence of either concealment or misrepresentation in any application or statement made by him, and every step in the conduct of the enterprises that made up the X-L Sales Company was approved by the O.P.A. agencies that had jurisdiction over these enterprises.

III.

The petition for certiorari was denied without comment, but petitioner's right to a sugar allotment for St. Bernard Syrup Company, and the arbitrary, oppressive and fraudulent action of the OPA in suspending his sugar rights, are so clearly established by the record, we are constrained to believe that this court inadvertantly failed to give due consideration to these points (See pages 10-15 of the Petition for Certiorari).

Again its action may have been influenced by a misleading statement in the Government brief. At page 7 thereof it is said that "petitioner was well aware that industrial users obtained sugar by means of allotments, and that, as an industrial user, he was not entitled to acquire 600 consumer sugar stamps". He did not acquire these sugar stamps as an industrial user (R. 276, 277, 295), and when he obtained the sugar involved in the indictment, it was for the purpose of storage, a thing he had a right to do, until he received the ration evidence as an industrial user to which he was entitled, and which O.P.A. officials had agreed to issue when the St. Bernard Syrup Company file was returned to Memphis, their official promises including the assurance that he would be promptly notified when this file was received from the New Orleans office of the O.P.A. by its Memphis office (R. 196, 268, 270).

These promises to petitioner were flagrantly violated. The file was so shuffled and concealed between and among O. P. A. Agencies, that petitioner's first information that it had been sent back to Memphis was obtained when it was produced in court ten months after the O. P. A. promises were made and broken, and then with material parts of the file removed. In the face of this situation, and without any notice whatever of the grounds on which his sugar rights had been suspended, the provisions of the regulations, prescribing the procedure for a review of administrative action, did not provide an adequate remedy for the protection of his rights. He did not take the law into his own hands, as contended at page 7 of the Government brief, but obtained the sugar involved for storage until he received his ration evidences, so doing in good faith. The intent with which it was obtained is the controlling consideration, and his testimony that he acted in

good faith is corroborated by many facts and circumstances.

It is respectfully submitted that the reprehensible conduct of the O. P. A. agencies, as shown by the record herein, should not be sanctioned by upholding a conviction that rests upon an extremely technical interpretation of confusing regulations.

L. E. GWINN

JOHN E. ROBINSON

Attorneys for Petitioner

CERTIFICATE

The undersigned attorneys for petitioner do hereby certify that the foregoing petition is filed in good faith, and not merely for delay.

L. E. GWINN

JOHN E. ROBINSON

THOMAS L. ROBINSON